DOCKET FILE COPY ORIGINAL RECEIVED

SEP 14 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of Advanced	)	
Telecommunications Capability to All Americans	)	
in a Reasonable and Timely Fashion, and Possible	)	CC Docket No. 98-146
Steps to Accelerate Such Deployment Pursuant	)	
to Section 706 of the Telecommunications Act	)	
of 1996	)	

COMMENTS OF ALLEGIANCE TELECOM, INC.

Robert W. McCausland
Vice President, Regulatory and Interconnection
Allegiance Telecom, Inc.
1950 Stemmons Freeway
Suite 3026
Dallas, TX 75207-3118
(214) 261-7117 or 1-800-750-1833 (Tel)
(214) 261-7110 (Fax)

No. of Copies rec'd 0+4
List ABCDE

ORIGINAL

TABLE OF CONTENTS

SUMMARY

This proceeding presents a significant opportunity for the Commission to identify measures that can "encourage the deployment on a reasonable and timely basis of advanced communications capability to all Americans" as envisioned in Section 706(b) of the Telecommunications Act of 1996 (1996 Act). Allegiance believes that the most significant barrier to greater deployment of advanced services is the continued intransigence of incumbent LECs to fully open their markets to competition. Allegiance will make a number of specific suggestions in comments in response to the *Section 706 Rulemaking*. Allegiance additionally suggests in this proceeding a number of measures that the Commission could take to promote the goals of Section 706. Allegiance urges the Commission to: resolve long-pending issues concerning the regulatory status of dark fiber by determining that dark fiber is an unbundled network element under Section 251 that incumbent LECs must provide to competitors; update its inside wiring rules in light to the goals of the 1996 Act to better promote competition; take steps to require incumbent LECs to disclose to competing LECs a customer's reserved telephone numbers when a customer switches from the incumbent to the competing LEC; require that incumbent LECs offer direct optical connection to competing LECs; take steps to prevent incumbent LECs from discriminating against competitors concerning participation in extended calling plans; and establish post-entry compliance measures to assure that Bell Operating Companies continue to comply with the requirements of Section 271 if and when they gain interLATA entry.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of Advanced	)	
Telecommunications Capability to All Americans	)	
in a Reasonable and Timely Fashion, and Possible	)	CC Docket No. 98-146
Steps to Accelerate Such Deployment Pursuant	)	
to Section 706 of the Telecommunications Act	)	
of 1996	)	

COMMENTS OF ALLEGIANCE TELECOM, INC.

Allegiance Telecom, Inc. ("Allegiance") respectfully submits the following comments in response to the Notice of Inquiry in this proceeding concerning the deployment of advanced telecommunications capability to all Americans.[1]

Allegiance is a competitive local exchange (LEC), interexchange, and international carrier that is rapidly expanding its provision of various competitive telephone services, Internet access, operator services, and high speed data services to areas throughout the country. Allegiance affiliates have received or are in the process of receiving authority to provide local exchange and interexchange service in several jurisdictions nationwide. Allegiance affiliates are currently

[1] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Notice of Inquiry, CC Docket No. 98-146, FCC 98-187, released August 7, 1998, ("NOI").

providing service in and near New York City and in areas within Texas, Illinois and Georgia. Further, Allegiance affiliates have also been authorized to provide service throughout the states of New Jersey (for resale), California, Maryland and Massachusetts. Allegiance affiliates have applications pending for certificates of authority to provide local exchange and interexchange telecommunications service in New Jersey (for facilities-based services), in the District of Columbia and Virginia. Allegiance affiliates will soon file applications to provide telecommunications services in Pennsylvania, Colorado, Michigan, and Washington and expects to follow shortly thereafter with similar applications in other states. Allegiance Telecom International, Inc. has received authority under section 214 of the federal Communications Act of 1934, as amended, from the Commission to provide international facilities-based and resale services between the United States and other countries.

INTRODUCTION

Section 706 of the Telecommunications Act of 1996 ("1996 Act")[2] directs the Commission to examine the availability of advanced telecommunications capability to all Americans. Section 706(a) directs the Commission and each state commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."[3] Section 706(b) directs the Commission to conduct the present inquiry to determine whether advanced telecommunications capability is being deployed to all Americans in a "reasonable and timely

---

[2] Pub. L. 104-104, Title VII, Sec. 706, Feb. 8, 1996, 110 Stat. 153, reproduced in the notes under 47 U.S.C. Sec. 157.

[3] *Id.*

fashion."[4] Upon completion of this inquiry, the Commission must take "immediate action to accelerate the deployment" of advanced telecommunications capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market if the inquiry determines that such capability is not being deployed in a reasonable and timely fashion.

Allegiance fully supports the Commission's inquiry. Allegiance believes that the most significant barrier to infrastructure investment is the continuing failure of incumbent LECs to fully open up their networks to competition. Allegiance and other competitive LECs are taking vigorous steps to provide advanced services to Americans throughout the country. Competitive entrants, however, continue to be frustrated in significant respects by incumbents' intransigence, and by the imposition of unreasonable terms and conditions on collocation of equipment in incumbents' central offices. Allegiance will provide comments to the Commission on how to address these matters in connection with the *Section 706 Rulemaking* to the extent they are within the scope of that proceeding.[5] Allegiance additionally submits the following specific suggestions or steps that the Commission could take to speed the provision of advanced services to all Americans. These steps will remove barriers to infrastructure investment and promote the offering of competitive advanced services by competitive LECs and other providers. Adoption of these proposals will help the Commission achieve the overarching goal of the 1996 Act "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of

---

[4] *Id.*

[5] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 98-188, released August 7, 1998 ("*Section 706 Rulemaking*").

advanced telecommunications and information technologies to all Americans by opening all telecommunications markets to competition."[6]

The Commission Should Take Steps to Promote the Availability of Dark Fiber

Dark fiber is inactivated fiber to which the customer can connect appropriate electronics to provide communications services to itself, or offer to others on a private or common carrier basis. Fiber cable has become the premier communications transmission facility combining low cost, efficiency, and huge capacity. Its broader availability from incumbent local exchange carriers (LECs) to competing local service providers would substantially promote competition in provision of local services.

However, whether ILECs are obligated to provide dark fiber, and if so, on what terms and conditions, has been clouded by the uncertain regulatory status of dark fiber. In 1988, in connection with an investigation of individual case basis (ICB) pricing policies of LECs, the Commission determined that dark fiber ICB offerings of LECs were common carrier offerings subject to the Commission's jurisdiction.[7] Subsequently, the Commission denied LECs' request pursuant to Section 214(d) of the Act to discontinue their dark fiber offerings.[8] The Commission found that

---

[6] S. Conf. Rep. No. 104-230, at 1 (1996). *See also Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 791 (8th Cir. 1997) (stating that Congress passed the 1996 Act, in part, "to erode the monopolistic nature of the local telephone service industry by obligating [incumbent LECs] to facilitate the entry of competing companies into local telephone service"), *cert. granted on other grounds sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 118 S.Ct. 879 (1998).

[7] *Local Exchange Carriers' Individual Case Basis DS3 Offerings* (*ICB Reconsideration*), CC Docket No. 88-136, FCC 90-270, 5 FCC Rcd 4842 (1990).

[8] 47 U.S.C. Sec 214(d).

dark fiber is subject to Title II regulation because it is "wire communications" offered on a common carrier basis and that LECs had not shown that withdrawal of the offering would not adversely affect the public interest.[9] Later, the Commission permitted LECs to cease new offerings of dark fiber, but required continuation of existing offerings. The United States Court of Appeals for the District of Columbia Circuit then remanded these decisions to the Commission finding that the Commission had not adequately justified its reasoning in finding that dark fiber was a common carrier offering.[10] In addition, in 1990 EDS Corporation filed a petition for declaratory ruling asking the Commission to determine that LECs have an obligation to furnish dark fiber on a common carrier basis.[11] The dark fiber issues on remand and the EDS petition remain pending before the Commission after four and eight years, respectively.

The issue of whether dark fiber should be an unbundled network element is also squarely before the Commission. Section 3(29) of the Act defines a network element as "... a facility or equipment used in the provision of a telecommunications service ..."[12] It is evident that dark fiber meets this definition because dark fiber is a facility used to provide telecommunications service. The *Local Competition Order* expressly declined to reach the issue of whether dark fiber should be

---

9 *Southwestern Bell Telephone Company*, File No. W-P-C-6670, 8 FCC Rcd 2589 (1993).

10 *Southwestern Bell Telephone Company v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994).

11 *Local Exchange Carriers' Individual Case Basis DS3 Offerings, Request for Declaratory Ruling*, CC Docket No. 88-136, filed October 3, 1990.

12 47 U.S.C. Sec. 153(29).

considered an unbundled network element.[13] However, this issue has been raised in pending petitions for reconsideration filed by interexchange carriers who argue that dark fiber should be considered an unbundled network element.[14]

The unsettled regulatory status of dark fiber represents a substantial barrier to competitive service providers in negotiating for and obtaining dark fiber from incumbent providers. The Commission should resolve these issues on an expeditious basis by determining on remand that dark fiber is a common carrier offering and by determining on reconsideration of the *Local Competition Order* by determining that dark fiber is an unbundled network element under Section 251 that ILECs are required to provide to requesting telecommunications carriers. In addition, the Commission should require that dark fiber be provided on a tariffed basis. This would enable persons who are not "requesting telecommunications carriers" under Section 251, and carriers for whom it may be burdensome to effectively participate in interconnection negotiations, to obtain dark fiber by ordering it out of a tariff.

The Commission Should Initiate A Proceeding to Update its Inside Wiring Rules to Accommodate and Promote Competition

---

13 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No.96-98, First Report and Order, 11 FCC Rcd 15499, 15722 (1996) (*Local Competition Order*), *vacated in part, aff'd in part*, Iowa Utils. Bd. V. FCC, 120 F.3d 753 (8th Cir. 1997), *cert. granted on other grounds sub nom.* AT&T Corp. v. Iowa Utils. Bd., 118 S.Ct. 879 (1998).

14 *See* Petition of AT&T Corp. for Reconsideration and/or Clarification, CC Docket No. 96-98, filed September 30, 1998; Petition for Reconsideration of MCI Telecommunications Corporation, CC Docket No. 96-98, September 30, 1998.

The Commission over the last decade has established a comprehensive program that permits consumers and businesses to connect customer-provided wiring to the public switched telephone network.[15] This program has provided substantial benefits to consumers and businesses. Consumers and businesses enjoy a greater range of service and facilities options by being able to choose inside wiring services and products from sources other than the incumbent LEC. At the same time, the Commission's rules under Part 68[16] protect the network from harm that could be caused by customer provision of inside wiring.

However, the Commission's has not yet reviewed its inside wiring program in light of the goals of the 1996 Act to create "a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[17] Nor has the Commission considered whether modification to its inside wiring rules could help meet the mandate of Section 706(a) of the 1996 Act that the Commission encourage the deployment of advanced telecommunications services to all Americans on a reasonable and timely

---

[15] *Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 88-57 (Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Competition of Simple Inside Wiring to the Telephone Network and Petition for Modification of Section 68-213 of the Commission's Rules filed by the Electronic Industries Association), 5 FCC Rcd 4686 (1990) ("*Common Carrier Wiring Order*");*Order on Reconsideration, Second Report and Order and Second Further Notice of Proposed Rulemaking*, CC Docket No. 88-57 (Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network), FCC 97-209 (released June 17, 1997) ("*Common Carrier Wiring Reconsideration Order*").

[16] 47 C.F.R. Part 68.

[17] S. Conf. Rep. No. 104-230, at 1 (1996). *See also* Iowa Utils. Bd. v. FCC, 120 F.3d 753, 791 (8th Cir. 1997). *See* n. 6, *supra*.

basis through "regulatory measures that remove barriers to infrastructure investment." The current rules can frustrate competitive entrants' abilities to provide service, and have created an urgency to revisit inside wiring rules and policies. Accordingly, Allegiance urges the Commission to issue a declaratory ruling in this proceeding, as described below, concerning certain inside wiring practices and to otherwise initiate a rulemaking proceeding to update its inside wiring rules to ensure that they comport with the goals of the Act.

In order to provide service to commercial or residential customers in multiunit buildings it is necessary for the service provider to install, or use preexisting wiring installed, in the building extending from the service entrance to the building to the customer's premises. This installed wiring and/or the conduit in which wiring can be installed is owned either by the building owner or the carrier that is currently providing service to some or all customers in the building. Allegiance has encountered situations, however, in which a customer wishes to obtain telephone, data, or Internet services from Allegiance but Allegiance is unable to provide them promptly or on a cost-effective basis because the building owner and current provider (the incumbent LEC) have entered into agreements or informal arrangements which effectively provide for exclusive access to building wiring and conduit, or the exclusive right to install it, by the incumbent.

Such contracts or arrangements can clearly frustrate the desire of the customer, and even the building owner, to obtain competitive services. In many cases, these arrangements were established before building owners recognized that they might have a choice in local service provider. These provisions also frustrate the goals of the 1996 Act to achieve competition in the provision of local services and to promote the availability of advanced services. Such provisions constitute direct barriers to infrastructure investment because they frustrate the ability of Allegiance and new carriers to utilize the intrabuilding infrastructure necessary to provide new services.

Allegiance urges the Commission to determine that such exclusive contract provisions are unreasonable and unlawful under Sections 201-202 of the Communications Act, and that new service providers may use existing inside wiring installed by the incumbent LEC subject only to payment of reasonable costs to the incumbent LEC.[18] Further, the Commission should additionally establish obligations on building owners to permit all local exchange carriers access to building wiring owned by the building owner on nondiscriminatory terms and conditions and should create a process that establishes a role for state commissions or local authorities to resolve case-specific disputes promptly.

Such requirements and processes would not burden or be harmful to building owners or any LEC. Finding that exclusivity arrangements contracts are unlawful, and imposing nondiscriminatory obligations on building owners, will not unduly restrict the ability of building owners to negotiate competitively-neutral arrangements for access to and use of intra-building wiring. Thus, they may arrange with any carrier for installation and use of intra-building wiring or may permit any carrier to use existing wiring owned by the building owner subject only to an obligation to deal equally with all carriers. These actions would assure that the building owner could permit another carrier access to wiring and/or conduit and that customers may choose the service provider of their choice.

Although the Commission has not heretofore sought to impose nondiscrimination safeguards on building owners, it is clear that the Commission has authority to take such action. Building inside

---

[18] Allegiance believes that costs for use of intrabuilding wiring will be negligible because most wiring will have been fully depreciated by the incumbent LEC.

wiring is used in interstate communications and it is well established that the Commission's jurisdiction extends to facilities used for interstate communications notwithstanding that the facilities in question are intrastate or local.[19] The Commission has already imposed a number of requirements on intra-building wiring that is the property of building owners.[20] The Commission additionally has authority under the Act to regulate the terms and conditions under which LECs may enter into contracts for or in connection with communications services.[21] Moreover, the Commission has established that it has exclusive jurisdiction over the terms and conditions under which customers may connect customer premises equipment to the telephone network and inside wiring is a type of customer premises equipment.[22]

---

[19] Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corp., 7 FCC Rcd 1619, 1621 (1992) (quoting New York Tel. V. FCC, 631 F.2d 1059, 1066 (2d Cir. 1980)); *see also* Puerto Rico Tel. Co. v. FCC, 553 F.2d 694, 699 (1st Cir. 1977); MCI Communications Corp. v. AT&T, 369 F.Supp 1004, 1028-1029 (E.D. Pa. 1974), *vacated on other grounds*, 496 F.2d 214 (3d cir. 1974). *See* NARUC v. FCC, 746 F.2d 1492, 1499 (D.C. Cir. 1984) ("The dividing line between the regulatory jurisdictions of the FCC and state depends on 'the nature of the communications which pass through the facilities [and not on] the physical location of the lines'" (*citations omitted)); Id.* at 1498 ("[e]very court that has considered the matter has emphasized that the nature of the communications is determinative rather than the physical location of the facilities used").

[20] *See* 47 C.F.R. Sections 68.213 and 68.215.

[21] *See* 47 U.S.C. Sections 201 - 205 and 211.

[22] *See* Louisiana Public Service Comm'n v. FCC, 476 U.S. 355, n. 4 (1986). *See also* Maryland Public Service Comm'n v. FCC, 909 F.2d 1510 (D.C. Cir. 1990); California v. FCC, 905 F.2d 1217 (9th cir. 1217); Texas Public Utility Comm'n v. FCC, 886 F.2d 1325, 1331 (D.C. Cir. 1989); National Association of Regulatory Commissioners v. FCC, 880 F.2d 422, 429 (D.C. Cir. 1989); North Carolina Utilities Comm'n v. FCC, 537 F.2d 787 (4th Cir.), *cert. denied*, 429 U.S. 1027 (1976); North Carolina Utilities Comm'n v. FCC, 552 F.2d 1036 (4th Cir.), *cert. denied*, 434 U.S. 874 (1977).

The Commission has already tentatively concluded that exclusive contracts between multiple dwelling unit (MDU) owners and multichannel video programming distributor (MVDPs) can be anticompetitive and has proposed measures to significantly limit or ban such contracts.[23] The Commission should take similar pro-competitive steps with respect to telephone inside wiring.

Allegiance urges that the Commission in this proceeding declare unlawful existing and future contracts between building owners and telecommunications carriers that provide that only one carrier may install inside wiring or use existing wiring in the building. In addition, the Commission should initiate a general rulemaking to update its inside wiring rules in light of the 1996 Act. The Commission should propose to require that building owners provide equal and non-discriminatory access to building inside wiring and conduit; and consider prohibiting incumbent LECs from exercising any rights of ownership with respect to wiring installed and owned by them in multi-unit installations.[24]

Disclosure of Reserved Telephone Numbers

---

[23] *Telecommunications Services Inside Wiring* (Report and Order and Second Further Notice of Proposed Rulemaking), CS Docket No. 95-184, 13 FCC Rcd 3660, 3778 (1997).

[24] The Commission has previously prohibited incumbent LECs from exercising any ownership rights over simple inside wiring. *Inside Wiring Detariffing Order*, CC Docket 79-105, 51 Fed. Reg. 8498 (1986), paras.52, 57, *recon. in part, Inside Wiring Reconsideration Order*, 1 FCC Rcd 1190, *further recon.* 3 FCC Rcd 1719 (1988), *remanded* NARUC v. FCC, 880 F.2d 1989. The term "simple inside wiring" refers to telephone wiring installations of up to four access lines. *See* 47 C.F.R. § 68.213.

In establishing number portability requirements, the Commission adopted the recommendations of the North American Numbering Council (NANC)[25] relating to the porting of reserved and unassigned numbers.[26] Under those recommendations, customers may port numbers that they have reserved under a legally enforceable written agreement but that have not been activated, and reserved numbers are treated as disconnected numbers when the customer is disconnected or when the service is moved to another service provider and the reserved numbers are not ported to subsequent service providers.[27] With respect to compliance with these policies, the NANC recommended that several courses of action be available to a service provider that finds it is disadvantaged by instances of non-compliance with policies concerning porting of reserved numbers. The service provider may contact the service provider with which it has a dispute to attempt to resolve issues, and if that is not successful, the service provider may bring the matter to the attention of the regional Limited Liability Corporation (LLC) for resolution via the LLC's dispute resolution process, to the NANC, to state public utilities commissions, or to other bodies as deemed appropriate by the service provider.[28]

Allegiance fully supports the foregoing policies concerning porting of reserved telephone numbers. Allegiance has found, however, that is it impossible or very difficult to determine from

---

25 The NANC is a federal advisory committee established pursuant to the Federal Advisory Committee Act, 5 U.S.C. app 2 (1988) to provide advice and recommendations to the Commission on numbering issues.

26 *Telephone Number Portability*, Second Report and Order, CC Docket No. 95-116, 12 FCC Rcd 12281, 12319. *See also Architecture and Task Force Report* at Sec 7.7; see also *Technical & Operations Task Force Report* at Sec. 10.1.

27 *Id.*.

28 *Id.* at 12320.

incumbent LECs whether a particular porting customer has reserved numbers. While the customer can contact the incumbent LEC directly on this matter, the administration of the service change and ordering process would be facilitated and simplified if the new service provider is able to obtain from the incumbent LEC a list of all numbers that the porting customer has validly reserved under the policies adopted by the Commission. In many instances, Allegiance is not able to obtain any answer from the ILEC as to whether the porting customer has reserved numbers *i.e.*, this information is not included on the customer service record (CSR) and is not readily available.[29] This can make it very difficult for the new service provider to allocate switching and transmission facility resources to adequately serve the customer and can lead to customer dissatisfaction with the new service provider through no fault of that new provider (thus benefitting the ILEC).

The 1996 Act recognized that the ability of customers to retain their telephone numbers when changing service providers would be critical to achieving Congress's goals of a competitive market for provision of local telecommunications services.[30] To address this concern, Congress in Section

---

[29] The CSR is the primary mechanism by which competitive LECs obtain pre-order information from incumbent LECs in order to serve new customers.

[30] *See, e.g.*, H. COMMERCE COMM. REP. No 104-204, pt. 1, at 72 (1995)(to accompany H.R. 1555)(stating that "[t]he ability to change service providers is only meaningful if a customer can retain his or her local telephone number"), *reprinted in* 1996 U.S.C.C.A.N. 10, 37. *See also In re Telephone Number Portability*, First Report and Order & Further Notice of Proposed Rulemaking, 11 FCC Rcd. 8532, 8367-68 (1996) (Order & Further Notice) (citing evidence that business and residential customers are reluctant to switch carriers if they must change telephone numbers, and state that "[t]o the extent that customers are reluctant to change service providers due to the absence of number portability, demand for services provided by new entrants will be depressed. This could well discourage entry by new service providers and thereby frustrate the pro-competitive goals of the 1996 Act"), *appeals pending on other grounds sum nom.* US WEST v. FCC, No. 97-9518 (10th Cir. held in abeyance Sept. 12, 1997) and Bell Atlantic NYNEX Mobile v. FCC, No. 97-955 (10th Cir. filed May 30, 1997).

251(b)(2) of the amended Communications Act required all LECs "to provide the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[31] A requirement that LECs disclose to the new service provider all reserved telephone numbers would help implement the number portability mandate of the 1996 Act, would remove a barrier to infrastructure investment by providing the competing carriers with information necessary for efficient network planning and service provisioning and would eliminate an area of customer dissatisfaction with new service providers. Nor would a simple requirement that LECs disclose numbers that have been validly reserved by a porting customer burden any carrier. Allegiance recommends that the Commission as part of this proceeding recommend that the NANC and the regional LLCs require this disclosure as part of all LECs' number portability service change and administration process. To the extent necessary, Allegiance recommends that the Commission adopt this requirement *sua sponte* in connection with its number portability docket which remains open.[32]

Direct Optical Connection to Incumbent Optical Services

Section 251(c)(2) of the Communications Act imposes on incumbent LECs the "duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--

---

31 47 U.S.C. Sec. 251(b)(2).

32 Petitions for reconsideration on other grounds remain pending in CC Docket No. 95-116. The Commission may *sua sponte* change or supplement initial rules in open dockets notwithstanding that petitions for reconsideration are not pending concerning the particular matter involved. The initial record in that docket concerning reserved telephone numbers is sufficient to support the simple disclosure requirement requested by Allegiance.

> (A) for the transmission and routing of telephone exchange service and exchange access;
>
> (B) at any technically feasible point within the carrier's network;
>
> (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
> (D) on rates, terms, conditions that are just, reasonable, and nondiscriminatory, in accordance with terms and conditions of the agreement and the requirements of this section and section 252.[33]

In the *Local Competition Order*, the Commission determined that "technically feasible" as used in Section 251(c)(2) refers solely to technical or operational concerns, rather than economic, space, or site considerations;[34] that incumbent LECs must modify their facilities to the extent necessary to accommodate interconnection or access to network elements;[35] that the Act bars considerations of cost in determining what is "technically feasible";[36] and that incumbent LECs must prove to the appropriate state commission that interconnection or access at a point is not technically feasible.[37] Further, the Commission determined that an incumbent LEC would violate the duty to be "just" and "reasonable" under Section 251(c)(2)(D) if it provided interconnection to a competitor

---

[33] 47 U.S.C. Sec. 251(c)(2).

[34] *Local Competition Order* at para. 198. The Commission established several minimum technically feasible points of interconnection: the line side of a local switch, the trunk-side of a local switch; the trunk interconnection points for a tandem switch; and central office cross connect points in general. *Local Competition Order* at para. 210.

[35] *Local Competition Order* at para. 198.

[36] *Local Competition Order* at para. 199.

[37] *Local Competition Order* at para. 205

in a manner less efficient than an incumbent LEC provides itself;[38] and that the obligation to provide interconnection that is equal in quality to that provided itself requires the incumbent LEC to meet the same technical criteria and service standards that are used within their own networks.[39]

Notwithstanding these requirements, Allegiance has found that incumbent LECs will not permit Allegiance to establish a direct optical connection between Allegiance's and the ILEC's fiber optic facilities either collocated in the incumbent's central offices or at other points in the network where it would be technically feasible to do so. Instead, Allegiance is required to terminate its facilities in equipment that converts the optical signal to an electrical one which is then reconverted to an optical signal by the incumbent LEC for retransmission on the incumbent's optical facilities.

Incumbent LECs' requirements of this type violate Section 251(c)(2) and the Commission's implementing requirements established in the *Local Competition Order*. First, it is clear that direct optical connections are technically feasible in that the incumbent LECs use direct optical connections within their own networks. Indeed, direct optical connections constitute a standard industry practice. Further, since incumbent LECs use direct optical connections it is not just and reasonable under Section 251(c)(2) to require competitors to incur the additional expense of providing electrical/optical terminating equipment. Nor is the incumbent providing interconnection that is equal in quality to that provided to itself when it requires competitors to use the more costly and less efficient electrical/optical terminating equipment. Furthermore, incumbent LEC requirements that competitors

---

38 *Local Competition Order* at para. 219.

39 *Local Competition Order* at para. 224.

incur the additional, unnecessary expense of optical/electrical terminating equipment hinder the development of competition.

Allegiance requests that the Commission issue a declaratory ruling as part of this inquiry proceeding that, pursuant to Section 251(c)(2), incumbent LECs must provide to requesting interconnecting carriers direct optical interconnection of optical facilities. The Commission should require incumbent LECs to permit interconnection through direct fiber meet arrangements in incumbent central offices or at other points in the network where it is technically feasible to do so. Such interconnection can be accomplished by use of optical cross connects of the type already widely used in the industry. Incumbents should be required to offer the full array of interface options that are normally associated with direct optical connections such as the single mode fiber (SMF) 28 interface.[40] The Commission should also require that incumbents offer both channelized and unchannelized high capacity interfaces such as OC3 and OC3c. Of course, under Section 251(c)(2), it would also be necessary for the incumbent LEC to provide these optical interconnection arrangements at reasonable rates. Allegiance believes that these actions could be accomplished by a declaratory ruling because they are encompassed within the Commission's previous determinations in the *Local Competition Order* implementing Section 251(c)(2). Allegiance emphasizes that direct optical connection is a well understood and widely deployed industry practice. Therefore, Allegiance's proposal does not carry any significant risk of network harm.

Nondiscriminatory Participation in Extended Calling Plan Interconnection

---

[40] The SMF 28 interface is a standard fiber interface that involves use of a grade of fiber equivalent to that employed by most incumbent LECs.

Allegiance has discovered instances in which incumbent LECs selectively permit participation by other LECs in their extended area calling plans. Under extended area calling plans, customers may make calls to locations within a defined area without incurring toll charges. In some cases, the called party, usually a business that receives many calls, is able to subscribe to these plans so that its customers can call it from a wide area without incurring toll charges. In many cases incumbent LECs serving contiguous service areas participate in each other's respective extended area calling plans so that the two incumbent LECs' customers can enjoy the benefits of wide area calling, or of receiving calls, without callers incurring toll charges. For example, in the Dallas, Texas area SBC and GTE participate in each other's extended area calling plans. However, not all incumbent LECs offer such participation to competitive LECs. Allegiance has endeavored to obtain participation in SBC's extended calling plan in the Dallas area, but SBC refuses even to negotiate this issue. The consequence of this is that Allegiance is significantly disadvantaged in competing for customers, particularly business customers. Business customers of SBC are reluctant to switch to Allegiance or other competitive LECs because *their* customers who remain customers of SBC would begin to incur toll charges when they call businesses served by Allegiance. Competitive LECs' inability to participate in these plans constitutes a significant barrier to competition and to infrastructure investment; if competitive LECs are thwarted in their efforts to compete for customers they will not have incentives to invest and offer new services to consumers.

Allegiance urges the Commission to take steps to prevent this discrimination in participation in extended area calling plans. Incumbent LECs' discrimination against competitive LECs in participation in these plans is a blatant attempt to thwart competition and achievement of the goals of the 1996 Act. Allegiance believes that incumbent LECs' refusal to offer competitive LECs participation in these plans violates the mandate of Section 251(c)(2) that incumbent LECs offer interconnection at rates, terms, and conditions that are reasonable and nondiscriminatory. At a minimum in this proceeding, the Commission should adopt a policy statement that encourages state commissions to require in interconnection agreements that incumbent LECs may not discriminate against competitive LECs in allowing participation in incumbent LECs' extended area calling plans.

Preservation of Section 271 Compliance

Allegiance is concerned that if and when Bell Operating Companies (BOCs) sufficiently comply initially with the market opening requirements of Section 271 of the Act they may not have a continuing incentive to comply over time. Allegiance takes this opportunity to urge the Commission, if initial compliance with Section 271 is achieved, to take measures to preserve and enforce compliance with the requirements of Section 271. For example, the Commission should consider mandating post-entry testing of Operational Support System (OSS) compliance of the type recently required by the New York Public Service Commission in its "pseudo CLEC" pre-approval testing pursuant to contract with Hewlett Packard Corporation. If a BOC fails such ongoing testing, the Commission should take prompt enforcement action including prohibiting further marketing of the BOC's long distance service until compliance is again achieved. Continuing compliance measures will be essential if the pro-competitive deregulatory goals of the 1996 Act are to be fully realized.

Respectfully submitted,

Robert W. McCausland

Robert W. McCausland
Vice President, Regulatory and Interconnection
Allegiance Telecom, Inc.
1950 Stemmons Freeway
Suite 3026
Dallas, TX 75207-3118
(214) 261-7117 or 1-800-750-1833 (Tel)
(214) 261-7110 (Fax)

Dated: September 14, 1998

250596.1